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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 CASTLE ROCK HOLDINGS, LLC,

Case No. 2:19-cv-2079-KJD

8 Appellant,

**ORDER**

9 v.

10 LEONARD INDELICATO,

11 Appellee.

12 This is an appeal from an order dissolving the automatic stay in a Chapter 11 proceeding  
13 in the Bankruptcy Court in the District of Nevada. The debtor below, and appellant here, Castle  
14 Rock Holdings, LLC, noticed its appeal to this Court in early December 2019. Since then, it has  
15 done nothing to prosecute the appeal. Leonard Indelicato, a creditor below and appellee here,  
16 moved to dismiss Castle Rock's appeal for failure to prosecute (ECF No. 4). Castle Rock did not  
17 respond, nor did it take any other action to advance its appeal. Both the Federal Rules of  
18 Bankruptcy Procedure and this circuit's precedent authorize the Court to dismiss a bankruptcy  
19 appeal for failure to prosecute. The Court may do so on its own or on motion by the parties, and  
20 it need not provide notice prior to dismissal. Such a dismissal is warranted here as it is clear that  
21 the appellant has no interest in guiding its case through the appeals process. Accordingly,  
22 Indelicato's motion to dismiss (ECF No. 4) is granted.

23 This appeal stems from a civil action currently pending in the Eighth Judicial District  
24 Court in Nevada, Indelicato, et al., v. Cimino, et al., Case No. A-19-795953-B. Castle Rock is a  
25 necessary party in that action. AOB 3, ECF No. 4. The case was set for trial in December of  
26 2019 on an expedited basis due to Indelicato's age; he is eighty-eight. Id. Ten days before trial,  
27 Castle Rock filed a Chapter 11 bankruptcy action in the District of Nevada. With the bankruptcy  
28 action came the notice of automatic stay, which effectively halted the underlying civil case. Id. at

1 3–4. Indelicato promptly moved to terminate the automatic stay, and on November 27, 2019,  
2 Bankruptcy Judge August Landis granted the motion its entirety. Decl. of Indelicato, ECF No. 5-  
3 A. This appeal followed.

4 The Nevada Bankruptcy Court provided each party an appeal memorandum that outlined  
5 their individual deadlines to file the required appellate documents. That memorandum notified  
6 the parties that the designation of record on appeal and the appellant’s statement of issues were  
7 both due within fourteen days of the notice of appeal. Appeal Memo., ECF No. 1-3. Failure to  
8 timely file either document would prevent the bankruptcy court from forwarding the appellate  
9 record to the district court. Id. More than three months have passed, and Castle Rock has not  
10 provided either document. The bankruptcy court has filed three status reports indicating that it  
11 has been unable to forward the appellate record to the district court because neither the  
12 designation of record nor the statement of issues has been filed. ECF Nos. 3, 6, 7. In the interim,  
13 the parties’ underlying civil case and Castle Rock’s bankruptcy case are on hold until the  
14 applicability of the automatic stay is litigated.

15 Castle Rock’s refusal to provide the necessary documents to facilitate its appeal justify  
16 dismissal. District courts enjoy the inherent authority to manage the cases on their docket. Ferdik  
17 v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). Where a party has failed to prosecute their  
18 case, the Court may impose sanctions or even dismiss the case. Thompson v. Housing Auth., 782  
19 F.2d 829, 831 (9th Cir. 1986). The Court may dismiss the case on its own or on motion by the  
20 parties, and it need not give notice before the dismissal. Link v. Wabash R. Co., 370 U.S. 626,  
21 633 (1962). The Federal Rules of Bankruptcy Procedure reinforce the Court’s authority to  
22 dismiss an appeal for failure to prosecute. Indeed, the appellant’s failure to prosecute authorizes  
23 the district court “to act as it considers appropriate, *including dismissal of the appeal.*” Fed. R.  
24 Bankr. P. 8003(a)(2) (emphasis added).

25 Admittedly, dismissal is a harsh consequence for mere failure to prosecute a case. To  
26 protect against unnecessary or prejudicial dismissal, the Court weighs five factors: (1) the  
27 public’s interest in a prompt resolution; (2) the Court’s inherent need to manage its docket; (3)  
28 the risk of prejudice; (4) the public policy interest in reaching the merits of the case; and (5) the

1 availability of less drastic sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986).  
2 These factors favor of dismissal.

3 *Public Interest in Prompt Resolution*

4 Henderson's first prong examines the public interest in a prompt resolution of this case.  
5 The procedural posture of this case demonstrates that there is a strong public interest in the  
6 prompt resolution of this case. This appeal implicates two other active cases: the underlying  
7 bankruptcy proceeding and the state court action that spurred the bankruptcy case. Neither of  
8 those cases can proceed until the Court resolves the issue of the automatic stay. In effect, the  
9 automatic stay and this appeal are holding the underlying cases hostage. Yet, Castle Rock has  
10 refused to do anything to move the appeal along. Meanwhile, the parties in the underlying state  
11 court case must wait to litigate any claims involving Castle Rock and Indelicato. Each of those  
12 parties has an interest in the prompt resolution of this case.

13 Further reinforcing the public interest in prompt resolution is Indelicato's age. Nevada  
14 law allows preferential scheduling to litigants older than seventy. Nev. Rev. Stat. § 16.025.  
15 Using § 16.025, the presiding state court judge scheduled Indelicato's trial on an expedited basis.  
16 Castle Rock did not oppose the schedule. See Noall Decl. ECF No. 5-3. The delay in this appeal  
17 has effectively undone the expedited scheduling that Nevada law guaranteed Indelicato. Thus,  
18 there is strong public interest in the prompt resolution of this appeal.

19 *The Court's Need to Manage its Docket*

20 The Court has broad discretion to manage its docket. Ferdik, 963 F.2d at 1260. Federal  
21 district courts preside over a broad cross-section of civil and criminal cases that demand the  
22 Court's attention. The need to efficiently resolve these cases is ever-present. Parties who fail to  
23 meet deadlines or refuse to participate in their own cases takes resources from the cases that do  
24 meet their deadlines. Dismissing those cases that otherwise strain court resources free the Court  
25 to spend time on the cases that are progressing toward a resolution. Therefore, the Court's need  
26 to manage its docket supports dismissal.

1           *Risk of Prejudice*

2           Next, the Court evaluates the prejudice Castle Rock would suffer if its appeal is  
3 dismissed. Castle Rock would surely suffer some prejudice if the Court dismissed its appeal. It  
4 would lose the opportunity to challenge the underlying order that removed the automatic stay and  
5 would allow the underlying state court case to proceed. However, a party's prejudice must be  
6 more than self-inflicted wounds. Martin v. Yasuda, 829 F.3d 1118, 1126 (9th Cir. 2016). All of  
7 Castle Rock's presumed prejudice is a result of its failure, or refusal, to meet its deadlines. Thus,  
8 it would not be unfairly prejudiced if its appeal is dismissed.

9           On the other hand, the procedural history of this case demonstrates that Indelicato is the  
10 one who risks prejudice if this case is *not* dismissed. Indelicato believes that Castle Rock has  
11 intentionally delayed resolution of the underlying state court case from the very beginning.  
12 Castle Rock's actions seem to bear that out. Despite the state court expediting the case due to  
13 Indelicato's age, Castle Rock filed for bankruptcy and received protection from the automatic  
14 stay ten days before trial. That delayed trial. Then, after Judge Landis dissolved the automatic  
15 stay, Castle Rock appealed. That further delayed trial. Of course, Castle Rock was within its  
16 rights to file a legitimate bankruptcy case. However, its actions—or, more accurately, inaction—  
17 since its appeal support Indelicato's belief that delay was the strategy from the beginning. Such a  
18 delay is unreasonable and unjustifiable. Therefore, any risk of prejudice that Castle Rock would  
19 bear if this case is dismissed is outweighed by Indelicato's risk of prejudice if the case it not  
20 dismissed.

21           *Public Policy in Reaching the Merits of this Appeal*

22           There is always a public interest in reaching the merits of a case. Eitel v. McCool, 782  
23 F.2d 1470, 1471 (9th Cir. 1986). However, this case does not present any fact or legal issues that  
24 increase the policy need to resolve the case on its merits. At best, this factor is neutral.

25           *Availability of Less Drastic Sanctions*

26           Finally, the Court evaluates whether less drastic sanctions exist to achieve its goals. The  
27 Court enjoys broad discretion in fashioning sanctions. Where a party has refused to prosecute  
28 their case, the Court may impose any sanctions up to dismissal of a case when appropriate.

1 Thompson, 782 F.2d at 831. There are several options short of dismissal. Presumably, the Court  
2 could order Castle Rock to respond to Indelicato's motion to dismiss, or it could order Castle  
3 Rock to show cause why its case should not be dismissed for failure to prosecute. The Court  
4 could choose to impose monetary sanctions on Castle Rock for its failure to meet deadlines.  
5 However, the Court does not trust that any of those options would yield results.

6 To date, the Clerk of Court at the District of Nevada Bankruptcy Court has issued three  
7 separate notices that Castle Rock had not submitted the necessary documentation to proceed on  
8 its appeal. Those notices have not spurred Castle Rock to act. Indelicato has moved to dismiss  
9 the appeal based on Castle Rock's failure to act. The motion likewise failed to grab Castle  
10 Rock's attention, and Castle Rock has not responded or provided the necessary documentation to  
11 proceed. The case's history suggests there is little reason to believe that monetary sanctions or an  
12 order to show cause would result in anything more than further delay. Accordingly, while less  
13 drastic sanctions may be available, the Court does not believe them to be effective in this case.

14 Having reviewed Henderson's five factors, the Court finds that dismissal of this appeal is  
15 warranted. Accordingly, IT IS HEREBY ORDERED that appellee's Motion to Dismiss  
16 Bankruptcy Appeal (ECF No. 4) is **GRANTED**.

17 Dated this 13th day of April, 2020.

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21 Kent J. Dawson  
22 United States District Judge  
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